

[Instructions – please read notes/comments thru out the agreement template and fill in as appropriate.]

## SERVICES AGREEMENT

### INSERT CONTRACTOR LEGAL NAME – ALL CAPS/BOLD

THIS AGREEMENT is made on \_\_\_\_\_ (“Effective Date”) by and between **INSERT CONTRACTOR LEGAL NAME – ALL CAPS/BOLD**, a **choose type of business from drop down** located at **enter Contractor’s registered business address** (“Contractor”), and **CITY OF BLOOMINGTON, MINNESOTA**, a Minnesota municipal corporation located at 1800 West Old Shakopee Road, Bloomington, Minnesota 55431-3027 (“City”):

### RECITALS

- A. Contractor is engaged in the business of providing **[Comments]** services.
- B. City desires to secure a contract to provide **enter specific services the City wants the Contractor to provide**.
- C. Contractor represents that it has the expertise and capabilities to provide City with the requested services.
- D. City desires to engage Contractor to provide the services described in this Agreement and Contractor is willing to provide such services on the terms and conditions in this Agreement.

**NOW, THEREFORE**, based on the Recitals above and in consideration of the terms and conditions expressed in this Agreement, City and Contractor agree as follows:

### AGREEMENT

- 1. **Services to be Provided.** Contractor agrees to provide City with **[Comments]** services as described in Contractor’s Scope of Services attached to this Agreement as Exhibit A or any supplemental letter agreements, or both, entered into between City and Contractor (the “Services”). The Services referenced in the attached Exhibit A or any supplemental letter agreements shall be incorporated into this Agreement by reference. All Services shall be provided in a manner consistent with the level of care and skill ordinarily exercised by contractors currently providing similar services.
- 2. **Time for Completion.** This Agreement shall remain in force and effect commencing from Effective Date and continuing until the earlier of **enter completion date of contract** or completion of the Services unless terminated by City or amended pursuant to the Agreement.
- 3. **Consideration.** The consideration, which City shall pay to Contractor and shall not exceed **\$enter total \$ amount of contract**, for both the Services performed by Contractor and the

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expenses incurred by Contractor in performing the Services, shall be as set forth in Exhibit A and incorporated into this Agreement. City shall make progress payments, based on monthly invoices from Contractor. City’s payment shall be made within 30 days after Contractor’s statement. Contractor’s statement shall contain a detailed list of project labor and hours, rates, titles, and amounts undertaken by Contractor during that billing period.

4. **Expense Reimbursement.** Contractor will not be compensated separately for necessary incidental expenses. All expenses of Contractor shall be built into Contractor’s fixed compensation rates, unless reimbursement is provided for an expense that received the prior written approval of City, which approval may be provided via electronic mail.
5. **Approvals.** Contractor will secure City’s written approval before making any expenditures, purchases, or commitments on City’s behalf beyond those listed in the Services. City’s approval may be provided via electronic mail.
6. **Termination.** Notwithstanding any other provision hereof to the contrary, this Agreement may be terminated as follows:
  - a. The parties, by mutual written agreement, may terminate this Agreement at any time;
  - b. Contractor may terminate this Agreement in the event of a breach of the Agreement by City upon providing thirty (30) days’ written notice to City;
  - c. City may terminate this Agreement at any time at its option, for any reason or no reason at all; or
  - d. City may terminate this Agreement immediately upon Contractor’s failure to have in force any insurance required by this Agreement.In the event of a termination, City shall pay Contractor for Services performed to the date of termination and for all costs or other expenses incurred prior to the date of termination. As set forth in this Agreement, the parties agree that certain paragraphs in this Agreement survive termination of this Agreement.
7. **Amendments.** Except as expressly permitted by this Agreement, no amendments may be made to this Agreement except in writing signed by both parties.
8. **Remedies.** In the event of a termination of this Agreement by City because of a breach by Contractor, City may complete the Services either by itself or by contract with other persons or entities, or any combination thereof. The foregoing remedies provided to City for breach of this Agreement by Contractor shall not be exclusive. City is entitled to exercise any one or more other legal or equitable remedies available because of Contractor’s breach.
9. **Records/Inspection.** Pursuant to Minnesota Statutes § 16C.05, subd. 5, Contractor agrees that the books, records, documents, and accounting procedures and practices of Contractor, that are relevant to the contract or transaction, are subject to examination by City and the state auditor or legislative auditor for a minimum of six years. Contractor shall maintain

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such records for a minimum of six years after final payment. These obligations survive termination of this Agreement.

10. **Indemnification.** To the fullest extent permitted by law, Contractor, and Contractor’s successors or assigns, agree to protect, defend, indemnify, save, and hold harmless City, its officers, officials, agents, volunteers, and employees from any and all claims; lawsuits; causes of actions of any kind, nature, or character; damages; losses; or the costs, disbursements, and expenses of defending the same, including but not limited to attorneys’ fees, professional services, and other technical, administrative or professional assistance resulting from or arising out of Contractor’s (or its subcontractors, agents, volunteers, members, invitees, representatives, or employees) performance of the duties required by or arising from this Agreement, or caused in whole or in part by any negligent act or omission or willful misconduct, or arising out of the failure to obtain or maintain the insurance required by this Agreement. Nothing in this Agreement shall constitute a waiver or limitation of any immunity or limitation on liability to which City is entitled. These obligations survive termination of this Agreement.
  
11. **Insurance.** Contractor shall maintain reasonable insurance coverage throughout this Agreement. Contractor agrees that before any work related to the approved Services can be performed, Contractor shall provide certificate of insurance with limits of insurance of at least all of the following amounts:
  - a. Worker’s Compensation Insurance as required by Minn. Stat. §176.181;
  - b. Commercial General Liability in an amount of not less than \$1,500,000.00 per occurrence for bodily injury or death arising out of each occurrence, and \$1,500,000.00 per occurrence for property damage;
  - [c. Auto Liability in an amount not less than \$1,000,000.00 per occurrence;**
  - d. Pollution Legal Liability in an amount not less than \$5,000,000.00 for each occurrence and \$5,000,000.00 aggregate; and**
  - e. Cyber/Tech E&O in an amount of not less than \$2,000,000.00 per claim. ]**

To meet the minimum Commercial General Liability and Auto Liability requirements, Contractor may use a combination of Excess and Umbrella coverage. **Cyber/Tech E&O insurance shall be maintained in force at all times during the term of the Agreement and for a period of 3 years after termination of this Agreement.**

Contractor shall also name City as an additional insured on its Commercial General Liability, **Auto Liability**, and Umbrella or Excess policies, and will provide City with a current certificate of insurance that includes the following language: **“The City of Bloomington is named as an additional insured with respect to the commercial general liability, automobile liability, pollution liability, and umbrella or excess liability, as required by the contract. The umbrella or excess liability policy follows form on all underlying coverages.”** The certificate of liability insurance must also contain a statement that Contractor or its insurance provider shall not cancel or amend the policies included on the certificate unless thirty (30) days’ written notice is provided to City, or ten

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- (10) days’ written notice in the case of non-payment. These obligations survive termination of this Agreement.
12. **Waiver of Subrogation.** To the fullest extent permitted by law, Contractor waives all rights against City, its agents, officers, directors, and employees for recovery of damages to the extent these damages are covered by the workers’ compensation and employers’ liability, or commercial general liability or commercial umbrella/excess liability insurance obtained by Contractor pursuant to Paragraph 11 of this Agreement. Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.
  13. **Assignment and Subcontracting.** Neither City nor Contractor shall assign, subcontract, or transfer any rights under or interest (including, but without limitation, moneys that may become due or moneys that are due) in this Agreement, in whole or in part, without the written consent of the other except to the extent that the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent Contractor from employing such independent consultants, associates, and subcontractors, as it may deem appropriate to assist it in the performance of Services required by this Agreement. Any instrument in violation of this paragraph is null and void.
  14. **Independent Contractor.** Contractor shall be deemed an independent contractor. Contractor’s duties will be performed with the understanding that Contractor has special expertise as to the Services that Contractor is to perform and is customarily engaged in the independent performance of the same or similar services for others. All required equipment and personnel shall be provided or contracted for by Contractor. The manner in which the Services are performed shall be controlled by Contractor; however, the nature of the Services and the results to be achieved shall be specified by City. The parties agree that this is not a joint venture and the parties are not co-partners. Contractor is not to be deemed an employee or agent of City and has no authority to make any binding commitments or obligations on behalf of City except to the extent expressly provided in this Agreement. All Services provided by Contractor pursuant to this Agreement shall be provided by Contractor as an independent contractor and not as an employee of City for any purpose, including but not limited to: income tax withholding, workers’ compensation, unemployment compensation, FICA taxes, liability for torts and eligibility for employee benefits.
  15. **Compliance with Laws.** Contractor shall exercise due care to comply with applicable federal, state and local laws, rules, ordinances and regulations in effect as of the date Contractor agrees to provide the applicable services detailed in the attached exhibits or any supplemental letter agreement. Contractor’s guests, invitees, members, officers, officials, agents, employees, volunteers, representatives, and subcontractors shall abide by City’s policies prohibiting sexual harassment, firearms, and smoking, as well as all other reasonable work rules, safety rules, or policies regulating the conduct of persons on City

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property, at all times while performing duties pursuant to this Agreement. Contractor agrees and understands that a violation of any of these policies or rules constitutes a breach of this Agreement and sufficient grounds for immediate termination of this Agreement by City. These obligations survive termination of this Agreement.

16. **Entire Agreement.** This Agreement, any attached exhibits and any addenda or amendments signed by the parties shall constitute the entire agreement between City and Contractor and supersedes any other written or oral agreements between City and Contractor. This Agreement can only be modified in writing signed by City and Contractor. If there is any conflict between the terms of this Agreement and referenced or attached items, the terms of this Agreement shall prevail.
17. **Third Party Rights.** The parties to this Agreement do not intend to confer on any third party any rights under this Agreement.
18. **Choice of Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the state of Minnesota. Any disputes, controversies, or claims arising out of this Agreement shall be heard in the state or federal courts of Hennepin County, Minnesota, and all parties to this Agreement waive any objection to the jurisdiction of these courts, whether based on convenience or otherwise. These obligations survive termination of this Agreement.
19. **Conflict of Interest.** Contractor shall use reasonable care to avoid conflicts of interest and appearances of impropriety in representation of City. In the event of a conflict of interest, Contractor shall advise City and either secure a waiver of the conflict or advise City that it will be unable to provide the Services.
20. **Work Products and Ownership of Documents.** All records, information, materials and other work products, including, but not limited to the completed reports, drawings, plans, and specifications prepared and developed in connection with the provision of Services pursuant to this Agreement shall become the property of City, but reproductions of such records, information, materials and other work products in whole or in part may be retained by Contractor. Regardless of when such information was provided, Contractor agrees that it will not disclose for any purpose any information Contractor has obtained arising out of or related to this Agreement, except as authorized by City or as required by law. These obligations survive termination of this Agreement.
21. **Agreement Not Exclusive.** City retains the right to hire other **[Comments]** service providers for other matters, in City’s sole discretion.
22. **Data Practices Act Compliance.** Any and all data provided to Contractor, received from Contractor, created, collected, received, stored, used, maintained, or disseminated by Contractor pursuant to this Agreement shall be administered in accordance with, and is subject to the requirements of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13, and any applicable nondisclosure agreements. Contractor agrees to

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notify City within three (3) business days if it receives a data request from a third party. This paragraph does not create a duty on the part of Contractor to provide access to public data to the public if the public data are available from City, except as required by the terms of this Agreement. These obligations survive termination of this Agreement.

23. **No Discrimination.** Contractor agrees not to discriminate in providing products and services under this Agreement on the basis of race, color, sex, creed, national origin, disability, age, sexual orientation, status with regard to public assistance, or religion. Violation of any part of this provision may lead to immediate termination of this Agreement. Contractor agrees to comply with Americans with Disabilities Act, as amended (“ADA”), Section 504 of the Rehabilitation Act of 1973, and the Minnesota Human Rights Act, Minnesota Statutes, Chapter 363A. Contractor agrees to hold harmless and indemnify City from costs, including but not limited to damages, attorney’s fees and staff time, in any action or proceeding brought alleging a violation of these laws by Contractor or its guests, invitees, members, officers, officials, agents, employees, volunteers, representatives and subcontractors. Upon request, Contractor shall provide accommodation to allow individuals with disabilities to participate in all Services under this Agreement. Contractor agrees to utilize its own auxiliary aid or service in order to comply with ADA requirements for effective communication with people with disabilities.
24. **Authorized Agents.** City’s authorized agent for purposes of administration of this Agreement is **enter City’s department contact for this contract**, the **enter title of City contact** of City, or designee. Contractor’s authorized agent for purposes of administration of this Agreement is **enter Contractor’s contact name**, who shall perform or supervise the performance of all Services.
25. **Notices.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, postage fully prepaid, certified, return receipt requested, addressed to:
- Contractor: **enter Contractor’s business name and address**;  
Attn: **enter Contractor’s name, email and phone number**;
- City: City of Bloomington, 1800 West Old Shakopee Road, Bloomington, MN 55431,  
Attn: **enter City’s contact name, email and phone number**;
- or such other contact information as either party may provide to the other by notice given in accordance with this provision. A convenience copy may be provided electronically.
26. **Waiver.** No waiver of any provision or of any breach of this Agreement shall constitute a waiver of any other provisions or any other or further breach, and no such waiver shall be effective unless made in writing and signed by an authorized representative of the party to be charged with such a waiver.

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27. **Headings.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit or affect the scope and intent of this Agreement.
28. **Mediation.** Both parties agree to submit all claims, disputes and other matters in question between the parties arising out of or relating to this Agreement to mediation at the Conflict Resolution Center, 2101 Hennepin Avenue, Suite 100, Minneapolis, Minnesota 55405. In the event mediation is unsuccessful, either party may exercise its legal or equitable rights.
29. **Payment of Subcontractors.** Pursuant to Minnesota Statutes § 471.425, subd. 4a, Contractor agrees that it must pay any subcontractor within ten (10) days of the prime contractor’s receipt of payment from City for undisputed services provided by the subcontractor. Contractor agrees that it must pay interest of 1-1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100 or more is \$10. For an unpaid balance of less than \$100, the prime contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from a prime contractor must be awarded its costs and disbursements, including attorney’s fees, incurred in bringing the action.
30. **Publicity.** City and Contractor shall develop language to use when discussing the Services. Contractor agrees that any publicity regarding the Services or the subject matter of this Agreement must not be released unless it complies with the approved language. Contractor cannot use City’s logo or state that City endorses its services without City’s advanced written approval.
31. **Severability.** In the event that any provision of this Agreement shall be illegal or otherwise unenforceable, such provision shall be severed, and the balance of the Agreement shall continue in full force and effect.
32. **Signatory.** Each person executing this Agreement (“Signatory”) represents and warrants that he/she/they is duly authorized. In the event Contractor did not authorize the Signatory to sign on its behalf, the Signatory agrees to assume responsibility for the duties and liability of Contractor, as described in this Agreement, personally.
33. **Counterparts and Electronic Communication.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be transmitted by electronic mail in portable document format (“pdf”) and signatures appearing on electronic mail instruments shall be treated as original signatures.

[Signature pages follow.]

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**IN WITNESS WHEREOF**, City and Contractor have caused this Services Agreement to be executed by their duly authorized representatives on the respective dates indicated below.

**CITY OF BLOOMINGTON, MINNESOTA**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
James D. Verbrugge  
Its: City Manager

Reviewed and approved by the City Attorney.

\_\_\_\_\_  
Melissa J. Manderschied

**INSERT CONTRACTOR LEGAL  
NAME – ALL CAPS/BOLD**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Its: \_\_\_\_\_

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EXHIBIT A TO SERVICES AGREEMENT BETWEEN **INSERT CONTRACTOR LEGAL  
NAME – ALL CAPS/BOLD** AND  
THE CITY OF BLOOMINGTON, MINNESOTA

SCOPE OF SERVICES